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as he finds her and cannot insist that the victim of his negligence be willing to sever the natural bonds of parenthood and place the child for adoption.[34]

The Michigan court found: that public policy favors compensation such as that sought by the Troppis; that an unwanted child may result in a net financial detriment rather than benefit; and that adoption is not a reasonable mitigation requirement. Also, the court rejected the contention that the three items of damages together were so uncertain as to render them unduly speculative. The court then struggled with the question of approximating the costs of rearing the unwanted child[35] and found that while there existed some uncertainty in applying the benefit rule,[36] difficulty in determining the amount to be subtracted from gross damages would not justify a complete denial of recovery.[37]

Had the Troppi's problem been litigated a decade ago, recovery unquestionably would have been denied. However, neither people nor the law by which they live remain static. As in virtually every aspect of life, attitudes toward sex and sexual problems have undergone a social metamorphosis. Hopefully, as in the instant case, courts will follow changed social attitudes. Clearly, a pharmacist has traditionally been liable for negligence in filling a prescription for cold tablets or diet pills. The time has now come for the pharmacist to be held to the same standard of care in filling prescriptions for oral contraceptives. Any other view would place a higher premium on the human sinus and wasteline than on the human himself.

EDWARD R. SHOHAT

LIABILITY OF CREDIT CARD ISSUER FOR FAILURE TO DISCLOSE CREDIT TERMS AS REQUIRED BY THE TRUTH-IN-LENDING ACT

The plaintiff, a credit card holder, received a monthly statement from the defendant-bank, a credit card issuer,[1] showing a new balance and indicating that no finance charge had been incurred during the period

34. *Id.*

35. The court found that Mrs. Troppi's medical expenses, hospital bills, lost wages, and the actual cost of rearing the child were computable with reasonable accuracy. Likewise, pain and anxiety are elements of damages traditionally entrusted to the trier of fact. *Id.* at 260-62, 187 N.W.2d at 520-22.

36. *See* note 23 *supra* and accompanying text.

37. Under applicable Michigan case law, difficulty in reaching a precise determination of damages is no bar to recovery. *See, e.g.*, Purcell v. Keegan, 359 Mich. 571, 103 N.W.2d 494 (1960), where recovery was permitted for unpaid compensation for overtime work. The precise amount of work was not ascertainable in that case.

1. The parties were contractually related under a credit card plan, the Master Charge Card Agreement.

covered by the statement. The statement also indicated that if full payment was made within 25 days the account would not fall into arrears and *no* interest would be charged; a minimum payment of ten dollars in lieu of full tender within that same time period would prevent the account from falling into arrears. Although the statement reported three periodic (monthly) percentage rates,[2] no "annual percentage rate" of any kind was shown. The plaintiff commenced this action in the United States District Court for the Southern District of New York claiming that the defendant's failure to disclose the annual percentage rate while at the same time allowing for a minimum payment which if elected would result in the assessment of interest charges on the balance remaining, violated the disclosure requirements of section 127(b)(5) of the Truth-in-Lending Act.[3] The court granted plaintiff's motion for summary judgment and *held*: 1) The creditor-bank violated the disclosure requirements of section 127(b)(5) of the Truth-in-Lending Act[4] when it failed to disclose the "nominal annual percentage rate"[5] of interest on a periodic statement to a debtor regardless of any bona fide misinterpretation of the Act's requirements; and 2) under the civil liability section of the Act,[6] the debtor (as a private attorney general) had a right of action against the bank for its failure to disclose the required information even though the debtor elected to pay the full amount due and thus avoided *any* interest charges. *Ratner v. Chemical Bank New York Trust Co.*, 329 F. Supp. 270 (S.D.N.Y. 1971).[7]

The growth of consumer credit since the end of World War II has been phenomenal. The aggregate consumer credit debt today is over 17 times as great as that of 1945.[8] American families pay about $13 billion dollars a year in interest and service charges for consumer credit (about as much interest as the federal government pays for the national debt).[9] Perhaps the most rapidly growing form of consumer credit is "open-end" or revolving credit. It is estimated that outstanding open-end credit has reached the $5.3 billion mark.[10] The number of credit cards used by

2. Disclosure of the periodic rate is expressly required by 15 U.S.C. § 1637(b)(5) (1970).

3. 15 U.S.C. § 1637(b)(5) (1970).

4. 15 U.S.C. § 1637(b)(5) (1970) and the implementing regulation, 12 C.F.R. § 226.7 (1971).

5. The nominal annual percentage rate is derived by multiplying the periodic rate by the number of periods in a year. 15 U.S.C. § 1637(b)(5) (1970).

6. 15 U.S.C. § 1640 (1970).

7. *See also* Ratner v. Chemical Bank New York Trust Co., 309 F. Supp. 983 (S.D.N.Y. 1970), the earlier episode of the instant case wherein it was decided that the case would be allowed to proceed in the federal district court since the Federal Reserve Board did not have primary jurisdiction of an action brought by a private plaintiff against a bank for a violation of the Truth-in-Lending Act.

8. H.R. REP. No. 1040, 90th Cong., 1st Sess. 10 (1967.)

9. *Id.*

10. *Id.* Open-end credit is an arrangement whereby the obligor receives a monthly statement from the credit card issuer. The obligor may then pay the full balance due, or he may pay only a fixed portion and carry the remaining balance forward. If he chooses

consumers has soared. One result of this has been a proliferation of conflicting, confusing, and irreconcilable, credit terms and practices.[11] The consumer has obviously been in dire need of assistance.

In 1959, the first Truth-in-Lending bill was introduced in the 86th Congress by Senator Paul Douglas of Illinois.[12] After extensive pressure from banks, finance companies, and some retail operations, this bill was not enacted, nor was action taken on similar bills introduced in three subsequent Congresses.[13] Finally, in 1968, Congress enacted the Truth-in-Lending Act.[14]

The Act's legislative history reveals one recurrent theme, the need to provide a meaningful disclosure of credit terms to the consumer as the basic thrust of the Act. The Congressional Record of April 18, 1967, states:

> Information disclosure is the center of the issue. Although truth-in-lending proposals have varied in their details over the years, all have required that persons lending money or selling goods on credit give their customers information showing the complete cost of the loan or purchase, including interest and all other incidental charges.[15]

Thus, the nature of the Act is prospective. Its purpose is to provide disclosure of credit terms prior to the consumer's accepting the offer to buy on credit. The House Banking and Currency Committee, discussing the Truth-in-Lending legislation, stated that in their view "such full disclosure would aid the consumer in deciding for himself the reasonableness of the credit charges imposed and further permit the consumer to 'comparison shop' for credit."[16] This theme is embodied expressly in the Act itself. Section 102 states:

> It is the purpose of this subchapter to assure a *meaningful disclosure of credit terms* so that the consumer will be able to *compare more readily the various credit terms available to him* and avoid the uninformed use of credit.[17]

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the latter method, a finance charge or fixed interest rate is assessed monthly on the outstanding balance.

11. President Johnson, in a message to the 90th Congress transmitting recommendations for consumer protection, stated:

> In many instances today, consumers do not know the costs of credit. Charges are often stated in confusing or misleading terms. They are complicated by "add-ons" and discounts and unfamiliar gimmicks. The consumer should not have to be an actuary or a mathematician to understand the rate of interest that is being charged.

H.R. Doc. No. 57, 90th Cong., 1st Sess. 3 (1967).

12. S. 2755, 86th Cong., 2d Sess. (1959).

13. 113 Cong. Rec. 9955-57 (1967).

14. 15 U.S.C. §§ 1601-65 (1970) [hereinafter cited as the Act.]

15. 113 Cong. Rec. 9955 (1967) (excerpt from 25 Cong. Q. 518 (1967), introduced into the Record by Senator Proxmire).

16. H.R. Rep. No. 1040, 90th Cong., 1st Sess. 7 (1967).

17. 15 U.S.C. § 1601 (1970) (emphasis added).

To assure "meaningful disclosure" of credit terms, two important mechanisms were created: the mechanism of disclosure and the mechanism of enforcement.[18]

From the beginning of the legislative process, proponents of the Act recognized the need for a generally acceptable and consistant form of disclosure which would permit the consumer to compare the costs of a loan or purchase from different lending institutions or stores.[19] The mechanism finally chosen by Congress was the "annual percentage rate."

> [T]he consumer must have a uniform standard of measure. This standard, to be effective, should be based on a percentage rate. The only kind of percentage rate which would be meaningful, and readily understandable, to all consumers—as it is now to all professionals in the field of money and credit—is an *annual percentage rate*.[20]

Thus, section 127 of the Act[21] provides for some type of annual percentage rate disclosure for open-end consumer credit plans both at the time of opening the account[22] and on each periodic statement sent to the consumer.[23]

As a means of insuring the required disclosures, the Act implemented a mechanism of enforcement under section 130[24] whereby "any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required . . . to be disclosed to that person is liable to that person . . . ."[25] In so providing, Congress sought to create "private attorney generals" to participate prominently in enforcement by bringing suit on behalf of the public.[26] To encourage such private action, Congress provided for the award of costs, reasonable attorney's fees and liquidated damages for the successful plaintiff.[27]

In the instant case, because there was no finance charge during the period covered by the monthly statement in question, the first issue facing the court concerned whether the Act required disclosure of the "nominal

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18. The Act provides three mechanisms of enforcement: 1) administrative enforcement under 15 U.S.C. § 1607 (1970); 2) criminal liability for wilful and knowing violators provided in 15 U.S.C. § 1611 (1970); and 3) the civil liability provision contained in 15 U.S.C. § 1640 (1970), at issue in the instant case.

19. 113 CONG. REC. 9955 (1967).

20. Supplemental views of Representatives Wright Patman, *et al.*, H.R. REP. No. 1040, 90th Cong., 1st Sess. 107 (1967) (emphasis added) advocating inclusion of the requirement of disclosure of an "annual percentage rate" in open-end consumer credit plans. This requirement, while deleted in the committee, was restored on the House floor. CONF. REP. No. 1397, 90th Cong., 2d Sess. 24 (1968).

21. 15 U.S.C. § 1637 (1970).

22. 15 U.S.C. § 1637(a)(4) (1970).

23. 15 U.S.C. § 1637(b)(5)-(6) (1970).

24. 15 U.S.C. § 1640 (1970).

25. 15 U.S.C. § 1640(a) (1970).

26. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 280 (S.D.N.Y. 1971).

27. 15 U.S.C. § 1640(a) (1970).

annual percentage rate" in such a situation. Since the Act merely requires disclosure of this rate "to the extent applicable,"[28] the court relied on the Act's basic purpose to hold that disclosure of the nominal annual percentage rate was required whenever it was relevant and not just when there were finance charges due.

The defendant contended that since there was no finance charge at all, there could be no annual interest rate. This view, the court said, was at odds with the Act's basic thrust toward "meaningful disclosure."[29] The disclosure of the nominal annual percentage rate is required as a *prospective* device to "put the borrower in possession of the pertinent information before the plunge, so that he may know and intelligently compare his options."[30]

The plaintiff's suit was brought pursuant to section 130,[31] the civil liability section of the Act. In construing this section, the court held that the plaintiff had standing to sue based on the defendant-bank's failure to make the required disclosures despite the fact that the plaintiff was never deceived by the nondisclosure. Further, in the court's view, the suit was not precluded either because the plaintiff was not subject to a finance charge at the time of the omission or might never be subject to such a charge. The amount or existence of a finance charge is not a ground for liability; it is simply an aid in determining the amount of damages under the formula provided in the Act.[32]

Section 130(c) of the Act absolves a creditor from liability if the violation was "not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such

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28. 15 U.S.C. § 1637(b) (1970). The pertinent part of the statute is as follows:

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items *to the extent applicable*:

. . . .

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a)(2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding *nominal annual percentage rate* determined by multiplying the periodic rate by the number of periods in a year. (emphasis added).

29. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 275 (S.D.N.Y. 1971).

30. *Id.* at 276.

31. 15 U.S.C. § 1640 (1970). Subsection (a) of this statute provides:

Except as otherwise provided in this section, any creditor who fails in connection with any consumer credit transaction to disclose to any person any information required under this part to be disclosed to that person is liable to that person in amount equal to the sum of

(1) twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall not be less than $100 nor greater than $1000; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court.

32. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 280-81 (S.D.N.Y. 1971).

error."[33] The creditor-bank invoked this section as a "good faith" defense.[34] However, relying on a long line of criminal cases,[35] the court found that the violation was intentional where the bank "carefully, deliberately—intentionally—omitted the disclosure in question . . . ,"[36] even though there was no specific intent to violate the Act. Basing its decision on relevant legislative history,[37] the court determined this provision to be totally inapposite in dealing with errors of law even where made in good faith. The function of section 130(c) was viewed as protecting only creditors who have made unintentional clerical errors despite the exercise of due care in establishing procedures to avoid these errors.[38]

Finally, the court rejected the defendant-bank's contention that since its interpretation of the Act was, at a minimum, "unreasonable" the action should not lie because the bank was being subjected to a "penalty" for a reasonable mistake.[39] Following *Bostwick v. Cohen*,[40] the only other reported decision on the subject, the court in the instant case held that the remedial nature of the civil enforcement provision far outweighed its allegedly penal nature. Furthermore, the court reasoned that protection of "reasonable" violators would be grossly subversive to the Act's aim of protecting the consumer.[41]

Ratner is one of the first cases to construe the provisions of the Truth-in-Lending Act. As such, its value as precedent is greatly enhanced. With this in mind, the decision becomes important for three reasons. First as a decision well supported by logic, legislative history, and common sense, *Ratner* resolves the major ambiguities arising under sections 127(b)[42] and 130[43] of the Act, and resolves them in favor of the consumer. Second, having construed the statute in line with the Act's basic purpose of "meaningful disclosure," the court paved the way for this line of reasoning to be followed in subsequent litigation. Third, having construed the statute in favor of private enforcement, this case went a long way toward providing effective enforcement of the Truth-in-Lending Act by citizens suing in the public interest.

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33. 15 U.S.C. § 1640(c) (1970).

34. *Id.*

35. United States v. International Min. & Chem. Corp., 402 U.S. 558 (1971); Horning v. District of Columbia, 254 U.S. 135 (1920); Ellis v. United States, 206 U.S. 246 (1907); United States v. Gris, 247 F.2d 860 (2d Cir. 1957); Braswell v. United States, 224 F.2d 706 (10th Cir. 1955). *See* United States v. Custer Channel Wing Corp., 376 F.2d 675 (4th Cir. 1967).

36. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 281 (S.D.N.Y. 1971).

37. *Hearings on S. 5—Before the Subcomm. on Financial Institutions of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 64 ff., 226, 374, 426-27, 529, 584, 698 (1967).

38. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 281 (S.D.N.Y. 1971).

39. *Id.* at 282.

40. 319 F. Supp. 875 (N.D. Ohio 1970).

41. Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270, 282 (S.D.N.Y. 1971) [hereinafter cited as *Ratner*].

42. 15 U.S.C. § 1637(b) (1970).

43. 15 U.S.C. § 1640 (1970).

The court was presented with an opportunity to put teeth into the Truth-in-Lending Act and, from all appearances it did so by liberally construing the provisions of the Act in favor of the credit-consumer. However, the size of the bite remains to be seen and will only become apparent when the class action issues are determined as well as the questions of awarding plaintiff's costs and legal fees.[44]

Regardless of the disposition of the two remaining issues, however, it is likely that this solitary case will prompt many issuers of consumer credit to reevaluate their current practices to insure full compliance with all the disclosure requirements of the Act. Where such creditors might have hesitated before, the potential liability set out in *Ratner* will now force full disclosure, and this of course is what "truth-in-lending" is all about.

MICHAEL M. WALLACK

44. By its own admission, if allowed to continue as a class action, the defendant's potential liability may exceed one million dollars. Defendant's Answering Memorandum at 9, Ratner v. Chemical Bank New York Trust Co., 329 F. Supp. 270 (S.D.N.Y. 1971). However, see the Miami Herald, Sept. 1, 1971, § A, at 12, col. 2, wherein the following projection appears: "In New York, a federal judge has upheld the first round of a credit card class action suit which ultimately could involve . . . payments of $3.6 billion."